

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ADRIANNA R. BATTLES,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security
Administration,

Defendant.

NO: 2:14-CV-0040-TOR

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

BEFORE THE COURT are the parties' cross-motions for summary judgment. ECF Nos. 13, 17. Plaintiff is represented by Joseph M. Linehan. Defendant is represented by Sarah L. Martin. The Court has reviewed the administrative record and the parties' completed briefing and is fully informed. For the reasons discussed below, the Court grants Defendant's motion and denies Plaintiff's motion.

//

//

1 JURISDICTION

2 The Court has jurisdiction over this case pursuant to 42 U.S.C. §§ 405(g),
3 1383(c)(3).

4 STANDARD OF REVIEW

5 A district court's review of a final decision of the Commissioner of Social
6 Security is governed by 42 U.S.C. § 405(g). The scope of review under §405(g) is
7 limited: the Commissioner's decision will be disturbed "only if it is not supported
8 by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153,
9 1158 (9th Cir. 2012). "Substantial evidence" means relevant evidence that "a
10 reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159
11 (quotation and citation omitted). Stated differently, substantial evidence equates to
12 "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and
13 citation omitted). In determining whether this standard has been satisfied, a
14 reviewing court must consider the entire record as a whole rather than searching
15 for supporting evidence in isolation. *Id.*

16 In reviewing a denial of benefits, a district court may not substitute its
17 judgment for that of the Commissioner. If the evidence in the record "is
18 susceptible to more than one rational interpretation, [the court] must uphold the
19 ALJ's findings if they are supported by inferences reasonably drawn from the
20 record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district

1 court “may not reverse an ALJ’s decision on account of an error that is harmless.”
2 *Id.* at 1111. An error is harmless “where it is inconsequential to the [ALJ’s]
3 ultimate nondisability determination.” *Id.* at 1115 (quotation and citation omitted).
4 The party appealing the ALJ’s decision generally bears the burden of establishing
5 that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409–10 (2009).

6 FIVE-STEP SEQUENTIAL EVALUATION PROCESS

7 A claimant must satisfy two conditions to be considered “disabled” within
8 the meaning of the Social Security Act. First, the claimant must be “unable to
9 engage in any substantial gainful activity by reason of any medically determinable
10 physical or mental impairment which can be expected to result in death or which
11 has lasted or can be expected to last for a continuous period of not less than twelve
12 months.” 42 U.S.C. § 1382c(a)(3)(A). Second, the claimant’s impairment must be
13 “of such severity that he is not only unable to do his previous work[,] but cannot,
14 considering his age, education, and work experience, engage in any other kind of
15 substantial gainful work which exists in the national economy.” 42 U.S.C.
16 § 1382c(a)(3)(B).

17 The Commissioner has established a five-step sequential analysis to
18 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R.
19 §§ 404.1520(a)(4)(i)-(v), 416.920(a)(4)(i)-(v). At step one, the Commissioner
20 considers the claimant’s work activity. 20 C.F.R. §§ 404.1520(a)(4)(i),

1 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” the
2 Commissioner must find that the claimant is not disabled. 20 C.F.R.
3 §§ 404.1520(b), 416.920(b).

4 If the claimant is not engaged in substantial gainful activities, the analysis
5 proceeds to step two. At this step, the Commissioner considers the severity of the
6 claimant’s impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the
7 claimant suffers from “any impairment or combination of impairments which
8 significantly limits [his or her] physical or mental ability to do basic work
9 activities,” the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c),
10 416.920(c). If the claimant’s impairment does not satisfy this severity threshold,
11 however, the Commissioner must find that the claimant is not disabled. *Id.*

12 At step three, the Commissioner compares the claimant’s impairment to
13 several impairments recognized by the Commissioner to be so severe as to
14 preclude a person from engaging in substantial gainful activity. 20 C.F.R.
15 §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If the impairment is as severe as or more
16 severe than one of the enumerated impairments the Commissioner must find the
17 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d), 416.920(d).

18 If the severity of the claimant’s impairment does meet or exceed the severity
19 of the enumerated impairments, the Commissioner must pause to assess the
20 claimant’s “residual functional capacity.” Residual functional capacity (“RFC”),

1 defined generally as the claimant's ability to perform physical and mental work
2 activities on a sustained basis despite his or her limitations (20 C.F.R.
3 §§ 404.1545(a)(1), 416.945(a)(1)), is relevant to both the fourth and fifth steps of
4 the analysis.

5 At step four, the Commissioner considers whether, in view of the claimant's
6 RFC, the claimant is capable of performing work that he or she has performed in
7 the past ("past relevant work"). 20 C.F.R. §§ 404.1520(a)(4)(iv),
8 416.920(a)(4)(iv). If the claimant is capable of performing past relevant work, the
9 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
10 404.1520(f), 416.920(f). If the claimant is incapable of performing such work, the
11 analysis proceeds to step five.

12 At step five, the Commissioner considers whether, in view of the claimant's
13 RFC, the claimant is capable of performing other work in the national economy.
14 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). In making this determination,
15 the Commissioner must also consider vocational factors such as the claimant's age,
16 education and work experience. *Id.* If the claimant is capable of adjusting to other
17 work, the Commissioner must find that the claimant is not disabled. 20 C.F.R.
18 §§ 404.1520(g)(1), 416.920(g)(1). If the claimant is not capable of adjusting to
19 other work, the analysis concludes with a finding that the claimant is disabled and
20 is therefore entitled to benefits. *Id.*

1 The claimant bears the burden of proof at steps one through four above.
2 *Lockwood v. Comm’r of Soc. Sec. Admin.*, 616 F.3d 1068, 1071 (9th Cir. 2010). If
3 the analysis proceeds to step five, the burden shifts to the Commissioner to
4 establish that (1) the claimant is capable of performing other work; and (2) such
5 work “exists in significant numbers in the national economy.” 20 C.F.R.
6 §§ 404.1560(c), 416.960(c)(2); *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir.
7 2012).

8 ALJ FINDINGS

9 Plaintiff filed applications for disability insurance benefits and supplemental
10 security income on May 19, 2011 Tr. 149–55, 156–62. Plaintiff’s claims were
11 denied initially and upon reconsideration. Tr. 109–12, 113–15, 119–20, 121–22.
12 Plaintiff requested a hearing before an ALJ which was held on September 18,
13 2012. Tr. 32–70. The ALJ rendered a decision denying Plaintiff disability benefits
14 on October 12, 2012. Tr. 10–22.

15 At step one, the ALJ found that Plaintiff had not engaged in substantial
16 gainful activity since August 1, 2008. Tr. 12. At step two, the ALJ found that
17 Plaintiff had the following severe impairments:

18 morbid obesity; polycystic ovarian disease; mild degenerative changes
19 of the anterior cruciate (AC) joint and supraspinatus tendinosis of the
20 shoulder; right patellofemoral and medial femorotibial osteoarthritis;
mild degenerative disc disease of the cervical spine; mild to moderate
degenerative vertebral spondylosis in the lower thoracic spine; chronic
myofascial pain; thoracolumbar sprain/contusions, right hip

1 strain/contusion, right knee effusion, and right ankle sprain, status
2 post mechanical fall; diabetes mellitus II; and asthma associated with
3 possible early chronic obstructive pulmonary disease secondary to
4 smoking (20 CFR 404.1520(c) and 416.920(c)).

5 Tr. 12–13. At step three, the ALJ found that Plaintiff did not have an impairment
6 or combination of impairments that met or medically equaled a listed impairment.

7 Tr. 14. The ALJ then concluded that Plaintiff had the RFC to

8 perform sedentary work as defined in 20 CFR 404.1567(a) and
9 416.967(a) with the additional following limitations: no more than
10 occasional postural movements of climbing stairs, balancing, and
11 stooping; no postural movements of climbing ladders, kneeling,
12 crouching, and crawling; and avoidance of concentrated exposure to
13 extreme temperatures, vibration, respiratory irritants, and hazards.

14 Tr. 14. The ALJ found, at step four, that Plaintiff was able to perform past relevant
15 work as a telemarketer. Tr. 21. On that basis, the ALJ concluded that Plaintiff was
16 not disabled as defined in the Social Security Act, and did not proceed to step five.

17 Tr. 21.

18 The Appeals Council denied Plaintiff's request for review on December 19,
19 2013, making the ALJ's decision the Commissioner's final decision for purposes
20 of judicial review. Tr. 1–4; 20 C.F.R. §§ 404.981, 416.1484, 422.210.

ISSUES

19 Plaintiff raises three issues for review. First, whether the ALJ erred in
20 evaluating Plaintiff's credibility. ECF No. 13 at 13–14. Second, whether the ALJ

1 failed to properly consider and reject the testimony of Plaintiff's treating physician.
2 *Id.* at 9–12. Third, whether the ALJ erred at step three by not finding that
3 Plaintiff's impairments met or medically equaled a listed impairment. *Id.* at 12–13.

4 DISCUSSION

5 A. Plaintiff's Credibility

6 Plaintiff contends that "the ALJ did not properly consider nor reject her
7 testimony regarding her limitations from her impairments." ECF No. 13 at 13.
8 Plaintiff argues that the "ALJ did not specifically state why [Plaintiff's] testimony
9 regarding her limited ability to sit, stand, and walk, as well as her need to change
10 position frequently and elevate her legs, was not credible and what facts in the
11 record led to that conclusion." *Id.* at 13–14. Plaintiff also argues that the ALJ
12 misconstrued her testimony regarding daily activities. *Id.* at 14. Were this
13 testimony credited, Plaintiff contends, she is much more limited in her RFC than
14 the ALJ concluded. *Id.*

15 In social security proceedings, a claimant must prove the existence of a
16 physical or mental impairment with "medical evidence consisting of signs,
17 symptoms, and laboratory findings." 20 C.F.R. §§ 416.908, 416.927. A claimant's
18 statements about his or her symptoms alone will not suffice. 20 C.F.R. §§
19 416.908, 416.927. Once an impairment has been proven to exist, an ALJ "may not
20 reject a claimant's subjective complaints based solely on a lack of objective

1 medical evidence to fully corroborate the alleged severity of pain.” *Bunnell v.*
2 *Sullivan*, 947 F.2d 341, 345 (9th Cir. 1991) (en banc). As long as the impairment
3 “could reasonably be expected to produce [the] symptoms,” the claimant may offer
4 a subjective evaluation as to the severity of the impairment. *Id.* This rule
5 recognizes that the severity of a claimant’s symptoms “cannot be objectively
6 verified or measured.” *Id.* at 347 (quotation and citation omitted).

7 However, an ALJ may conclude that the claimant’s subjective assessment is
8 unreliable, so long as the ALJ makes “a credibility determination with findings
9 sufficiently specific to permit [a reviewing] court to conclude that the ALJ did not
10 arbitrarily discredit claimant’s testimony.” *Thomas v. Barnhart*, 278 F.3d 947, 958
11 (9th Cir. 2002); *see also Bunnell*, 947 F.2d at 345 (“[A]lthough an adjudicator may
12 find the claimant’s allegations of severity to be not credible, the adjudicator must
13 specifically make findings which support this conclusion.”). If there is no
14 evidence of malingering, the ALJ’s reasons for discrediting the claimant’s
15 testimony must be “specific, clear and convincing.” *Chaudhry v. Astrue*, 688 F.3d
16 661, 672 (9th Cir. 2012) (quotation and citation omitted). The ALJ “must
17 specifically identify the testimony she or he finds not to be credible and must
18 explain what evidence undermines the testimony.” *Holohan v. Massanari*, 246
19 F.3d 1195, 1208 (9th Cir. 2001).

1 Here, the ALJ found that the medical evidence confirmed the existence of
2 medical impairments which could reasonably be expected to cause the alleged
3 symptoms. Tr. 15. However, the ALJ did not credit Plaintiff's testimony about the
4 intensity, persistence, and limiting effects of the symptoms. There is no evidence
5 of malingering in this case, and therefore the Court must determine whether the
6 ALJ provided specific, clear and convincing reasons not to credit Plaintiff's
7 testimony of the limiting effect of his back and neck pain. *Chaudhry*, 688 F.3d at
8 672. The Court concludes that the ALJ did provide specific, clear and convincing
9 reasons.

10 The ALJ provided a number of reasons for concluding that Plaintiff's
11 testimony was not credible. First, the ALJ concluded that Plaintiff's daily
12 activities "detract[ed] from the severity of her allegations and support her abilities
13 to perform work related activities" Tr. 15. The ALJ found that Plaintiff's
14 ability to take her children to school, do housework, and run errands displayed
15 "more exertional and postural abilities than she alleged." *Id.* In evaluating the
16 credibility of a claimant's testimony, an ALJ may properly consider "whether the
17 claimant engages in daily activities inconsistent with the alleged symptoms."
18 *Molina*, 674 F.3d at 1113 (quoting *Lingenfelter v. Astrue*, 504 F.3d 1028, 1040 (9th
19 Cir. 2007)). "Even where those activities suggest some difficulty functioning, they
20 may be grounds for discrediting the claimant's testimony to the extent that they

1 contradict claims of a totally debilitating impairment.” *Id.* The ALJ did not err in
2 concluding that Plaintiff’s testimony about her daily activities demonstrated greater
3 postural and exertional ability than the severe limitations claimed.

4 The ALJ also concluded that Plaintiff’s noncompliance with her medical
5 treatments further detracted from the severity of the symptoms she alleged.
6 Specifically, the ALJ observed that Plaintiff’s noncompliance with her treating
7 physician, Dr. Duncan Lahtinen’s recommendation that she stop smoking detracted
8 from the severity of her breathing allegations. Tr. 16. The Court’s review of the
9 record indicates that Plaintiff reported smoking one and a half packs of cigarettes a
10 day in March 2009 and that treatment records as recently as 2011 continue to
11 report this usage, suggesting that it has not changed. *See, e.g.*, Tr. 405 (original
12 report), 330 (May 2011, same amount reported), 439 (December 2011, reported
13 that Plaintiff is current smoker, no amount given). Moreover, Dr. Lahtinen
14 specifically notes how Plaintiff has continued to smoke despite his strong
15 encouragement that she not. *See, e.g.*, Tr. 367 (August 2010, Plaintiff “continues
16 to smoke cigarettes in spite [sic] of being advised not to”), 331 (February 2011, Dr.
17 Lahtinen “strongly encouraged her to avoid tobacco”), 455 (September 2011, “She
18 is to discontinue tobacco use”). Such an inadequately explained failure to follow a
19 prescribed course of treatment “can cast doubt on the sincerity of the claimant’s
20 [symptom] testimony.” *Fair v. Brown*, 885 F.2d 597, 603 (9th Cir. 1989).

1 The ALJ also noted that Plaintiff has been noncompliant with her insulin
2 treatment for her diabetes mellitus which is consistent with uncontrolled nature of
3 her diabetes. Tr. 16. In August 2011, Plaintiff informed Dr. Lahtinen that she had
4 taken herself off insulin and was not treating her diabetes. Tr. 463 (also noting that
5 Plaintiff “hasn’t been taking her [blood pressure medications] as she should
6 have”). Dr. Lahtinen restarted her on insulin. Tr. 464. However, in May 2012,
7 Plaintiff again reported she was not taking the prescribed amount of insulin. Tr.
8 510. The ALJ concluded this raised questions about her ongoing non-compliance,
9 but the ALJ nevertheless accommodated the symptoms of her diabetes in her RFC.
10 Tr. 16.

11 Finally, the ALJ examined the objective medical evidence and concluded
12 that it “simply does not support [Plaintiff’s] testimony and statements regarding
13 her allegations of debilitating limitations and symptomatology.” Tr. 16. The ALJ
14 then thoroughly reviewed the radiological and clinical findings which indicated
15 only mild to moderate musculoskeletal impairments. Tr. 16–20. The ALJ also
16 noted that Plaintiff’s symptoms improved while she participated in physical
17 therapy. Tr. 19. “While subjective pain testimony cannot be rejected on the sole
18 ground that it is not fully corroborated by objective medical evidence, the medical
19 evidence is still a relevant factor in determining the severity of the claimant’s pain
20 and its disabling effects.” *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001).

1 The ALJ recognized Plaintiff's impairments in assigning a sedentary RFC, but did
2 not credit Plaintiff's claims that her symptoms severely limited her functionality.
3 Tr. 19–20. The ALJ's decision provides specific, clear and convincing reasons
4 supported by substantial evidence sufficient for this Court to conclude that the
5 adverse credibility determination was not arbitrary. Thus, there has been no
6 showing of any error affecting the ALJ's RFC finding.

7 B. Treating Physician Opinion

8 Plaintiff contends "the ALJ did not properly consider nor reject Dr.
9 Lahtinen's opinion regarding her physical limitations." ECF No. 13 at 10–11.
10 Specifically, Plaintiff argues "the ALJ did not set forth the requisite specific and
11 legitimate reasons supported by substantial evidence in the record for rejecting Dr.
12 Lahtinen's opinion." *Id.* at 12. If the ALJ had credited this opinion, Plaintiff
13 continues, "the ALJ would have to determine that [Plaintiff] was much more
14 limited from a physical standpoint and, in fact, disabled based on Dr. Lahtinen's
15 medical source statement." *Id.*

16 A treating physician's opinions are entitled to substantial weight in social
17 security proceedings. *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228
18 (9th Cir.2009). If a treating or examining physician's opinion is uncontradicted, an
19 ALJ may reject it only by offering "clear and convincing reasons that are supported
20 by substantial evidence." *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir.

1 2005). If a treating or examining doctor’s opinion is contradicted by another
2 doctor’s opinion, an ALJ may only reject it by providing specific and legitimate
3 reasons that are supported by substantial evidence.” *Id.* (citing *Lester v. Chater*, 81
4 F.3d 821, 830-31 (9th Cir. 1995)).

5 On September 17, 2012, Dr. Lahtinen completed a “Medical Source
6 Statement of Ability to Do Work-Related Activities (Physical)” providing a
7 functional assessment of Plaintiff. Tr. 537–42. The ALJ observed that Dr.
8 Lahtinen’s assessment was not consistent with the objective and radiological
9 findings in the record, and that it was inconsistent with the evaluation of
10 limitations provided by another treating physician, Dr. Patrick Soto. Tr. 20. As a
11 contradicted opinion, the Court must determine whether the ALJ, in assigning Dr.
12 Lahtinen’s opinion limited weight, provided specific and legitimate reasons
13 supported by substantial evidence. The Court concludes the ALJ did provide
14 specific and legitimate reasons.

15 First, the regulations direct ALJs to give more weight to the opinions of
16 specialists relating to their specialty than the opinions of nonspecialists. 20 C.F.R.
17 § 404.1527(c)(5); *Holohan v. Massanari*, 246 F.3d 1195, 1202 (9th Cir. 2001).
18 Thus, the ALJ properly assigned more weight to the opinion of Dr. Soto as “a
19 specialist in the area of rehabilitation to whom Dr. Lahtinen specifically referred
20 [Plaintiff] for treatment.” Tr. 20.

1 Second, the ALJ assigned little weight to Dr. Lahtinen's opinion of
2 Plaintiff's severely limited ability to sit, stand, and walk, because "Dr. Lahtinen
3 did not provide any basis or findings to support this assessment" and because "it is
4 inconsistent with the . . . evidence in of record." Tr. 20. An ALJ need not accept a
5 physician's opinion that is "brief, conclusory and inadequately supported by
6 clinical findings." *Bray*, 554 F.3d at 1228 (quotation and citation omitted). The
7 form completed by Dr. Lahtinen, consisting primarily of check boxes, did not
8 provide any basis for Dr. Lahtinen's conclusions. The ALJ properly considered
9 the lack of medical record support in assigning Dr. Lahtinen's opinion little
10 weight.

11 Finally, the ALJ assigned the opinion little weight because it "appears to be
12 based on the [Plaintiff's] subjective complaints rather than objective findings." Tr.
13 20. An ALJ may reject a treating physician's opinion which is "based to a large
14 extent on a claimant's self-reports that have been properly discounted as
15 incredible." *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008) (internal
16 and quotation and citation omitted). As discussed above, the ALJ provided clear
17 and convincing reasons not to credit Plaintiff's subjective complaints of the
18 severity of her symptoms. The ALJ did not err by assigning little weight to Dr.
19 Lahtinen's opinion based upon its reliance on Plaintiff's subjective statements.

1 It is the ALJ's duty to resolve conflicting medical opinion. *Thomas*, 278
2 F.3d at 956. Here, the ALJ set out a detailed and thorough examination of the
3 record and conflicting opinions, stated her interpretation of the evidence, and made
4 specific findings. The ALJ provided specific and legitimate reasons to assign little
5 weight to the functional assessment of Dr. Lahtinen in favor of significant weight
6 assigned to the conflicting opinions of Dr. Soto and the testifying medical expert.
7 Thus, there has been no showing of any error affecting the ALJ's RFC finding.

8 C. Step Three Analysis

9 Plaintiff contends that the ALJ erred by concluding that Plaintiff did not
10 have an impairment or combination of impairments that met or medically equaled
11 a listed impairment. Specifically, Plaintiff argues that the opinions of Dr. Lahtinen
12 and the testifying medical expert, Dr. Anthony E. Francis, demonstrate that
13 Plaintiff "meets or equals listings 1.02(a) [sic] and 1.04(A)." ECF No. 18 at 5.

14 The burden was upon the claimant to demonstrate that an impairment or
15 combination of impairments meets or equals a listing. *Burch v. Barnhart*, 400 F.3d
16 676, 679, 683 (9th Cir. 2005). "For a claimant to show that his impairment
17 matches a listing, it must meet *all* of the specified medical criteria. An impairment
18 that manifests only some of those criteria, no matter how severely, does not
19 qualify." *Sullivan v. Zebley*, 493 U.S. 521, 530 (1990) (emphasis in original).
20 "For a claimant to qualify for benefits by showing that his unlisted impairment, or

1 combination of impairments, is ‘equivalent’ to a listed impairment, he must present
2 medical findings equal in severity to *all* the criteria for the one most similar listed
3 impairment.” *Id.* at 531 (emphasis in original).

4 Listing 1.02(A) requires the claimant to show major dysfunction of joints
5 due to any cause, but characterized by “gross anatomical deformity” and “chronic
6 joint pain and stiffness with signs of limitation of motion or other abnormal motion
7 of the affected joint(s), and findings on appropriate medically acceptable imaging
8 of joint space narrowing, bony destruction, or ankyloses of the affected joint(s).”
9 20 C.F.R. § 404, Subpt. P, App. 1. It also requires a showing of “[i]nvolvement of
10 one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in
11 inability to ambulate effectively, as defined in 1.00B2b” *Id.* Listing 1.04(A)
12 requires the claimant to show a disorder of the spine “resulting in compromise of a
13 nerve root . . . or the spinal cord” with “[e]vidence of nerve root compression
14 characterized by neuro-anatomic distribution of pain, limitation of motion of the
15 spine, motor loss (atrophy with associated muscle weakness or muscle weakness)
16 accompanied by sensory or reflex loss and, if there is involvement of the lower
17 back, positive straight-leg raising test (sitting and supine)” *Id.*

18 Plaintiff has not specifically articulated how she meets all the criteria of
19 either listing. Instead, Plaintiff contends only that “[t]he opinion of Dr. Lahtinen
20 demonstrates the inability of [Plaintiff] to ambulate effectively,” that Dr. Francis

1 relied upon this opinion at the hearing, and that the ALJ's "analysis is only
2 supported by the wrong interpretation of Dr. Francis' testimony." ECF No. 18 at
3 5. Plaintiff argues that the ALJ misinterpreted the testimony of Dr. Francis
4 because "Dr. Francis acknowledges that the opinion of Dr. Lahtinen supports a
5 finding of either 1.02(a) [sic] or 1.04(a) [sic]." ECF No. 13 at 12.

6 At the hearing, Dr. Francis testified:

7 Now, this is kind of—this is a case where we don't really, really have
8 any clear meat [phonetic]. I mean, what we would be looking at is
9 either 1.04(a) or 1.02(a), which is dysfunction of a major weight-
10 bearing joint, either that or radiculopathy listing, we don't have
11 enough for that. The polycystic ovary disease is always sort of
12 difficult to deal with because usually those patients are overweight
13 and they, you know, tend to do have quite a bit of dysfunction. But
14 now, whether that's not dysfunction to say they can't work or not, it's
15 always sort of a, I mean, it's a judgment call as based on the facts of
16 the case.

17

18 There's not enough here to get to a musculoskeletal listing. We do
19 have this late submission opinion that she can't work or is
20 unemployable by the treating physician, so, the case is going to come
down to how much weight, trier of fact places on that particular
opinion. If that opinion is held to be credible and ruling, then she's
going to be probably equal to either a 1.04(a) or 1.02(a) just mainly
based on the weight of that opinion that she can't work or, in the
alternative, would be at less than sedentary, which is sort of the same
thing. Otherwise, there's not enough here to meet or equal a listing.

19 Tr. 43. In response to Plaintiff's counsel, Dr. Francis also explained:

20 Well, you know, as I said, I mean, I don't think there's any dispute that
she's got chronic pain. I mean, she's had chronic musculoskeletal

1 pain, and then it just becomes sort of fact driven issue of is there
2 enough information to indicate that she's either going to function at
3 less than a sedentary RFC, which we do have one opinion about that,
4 you know, the late submission here or fairly recent submission. And
5 then either that, or is there enough information to justify equaling the
6 1.04(a) or the 1.02(a). And, you know, it just really depends on the
7 case. It's always helpful to have an opinion from one of the treating
8 physicians or one of those, you know, examiners that claimant is at
9 less than sedentary. That helps justify either a 1.02(a) or a 1.04(a).
10 And I don't have any problem with that.

11 Tr. 46.

12 In short, Dr. Francis testified that determining Plaintiff's RFC would require
13 the ALJ to evaluate the specific facts of the case. However, contrary to Plaintiff's
14 contention, Dr. Francis did not adopt Dr. Lahtinen's opinion and he remained of
15 the opinion that there was not enough evidence in the record to indicate Plaintiff's
16 impairments met the listings. Dr. Francis acknowledged the ALJ was free to reach
17 a contrary conclusion "if" the ALJ found Dr. Lahtinen's opinion credible. *See* Tr.
18 43. Otherwise, Dr. Francis concluded, "there's not enough here to meet or equal a
19 listing." Tr. 43.

20 The Court has already discussed how the ALJ properly weighed Dr.
Lahtinen's opinion and the ALJ's conclusion that Dr. Lahtinen's opinion should
only be assigned little weight. Because the ALJ concluded that Dr. Lahtinen's
testimony as to the extent of Plaintiff's limitations was not credible, Plaintiff failed
to produce evidence demonstrating that her impairments met or medically equaled

1 either listing 1.02(A) or 1.04(A). As such, the ALJ did not err in making her step
2 three finding.

3 Plaintiff also asserts that the ALJ failed to make “requisite sufficient
4 findings” at step three. ECF No. 18 at 5. “It is unnecessary to require the [ALJ],
5 as a matter of law, to state why a claimant failed to satisfy every different section
6 of the listing of impairments” when the ALJ’s “‘evaluation of the evidence’ is an
7 adequate statement of the ‘foundations on which the ultimate factual conclusions
8 are based.’” *Gonzalez v. Sullivan*, 914 F.2d 1197, 1201 (9th Cir. 1990). In
9 determining Plaintiff’s RFC, the ALJ provided a thorough evaluation of the
10 medical evidence and of the opinions of Dr. Lahtinen, Dr. Soto, and Dr. Francis.
11 Any error to specifically discuss these findings at step three is harmless.


12 **IT IS HEREBY ORDERED:**

- 13 1. Plaintiff’s Motion for Summary Judgment (ECF No. 13) is **DENIED**.
14 2. Defendant’s Motion for Summary Judgment (ECF No. 17) is
15 **GRANTED**.

16 The District Court Executive is hereby directed to file this Order, enter
17 Judgment for Defendant, provide copies to counsel, and **CLOSE** the file.

18 **DATED** March 16, 2015.




THOMAS O. RICE
United States District Judge